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Filing date: **04/18/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051465
Party	Defendant Edge Games, Inc., and Future Publishing, Ltd.
Correspondence Address	TIM LANGDELL EDGE GAMES INC 530 SOUTH LAKE AVENUE, #171 PASADENA, CA 91101 UNITED STATES uspto@edgegames.com
Submission	Other Motions/Papers
Filer's Name	Tim Langdell
Filer's e-mail	uspto@edgegames.com, tim@edgegames.com
Signature	/Tim Langdell/
Date	04/18/2013
Attachments	EdgesReplyToPetsOppToMotToConfOrdVoid.pdf (17 pages)(217718 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 3,559,342
For the Trademark THE EDGE
Issued January 13, 2009

In the Matter of Registration No. 3,381,826
For the Trademark GAMER'S EDGE
Issued February 12, 2008

In the Matter of Registration No. 3,105,816
For the Trademark EDGE
Issued June 20, 2006

In the Matter of Registration No. 2,251,584
For the Trademark CUTTING EDGE
Issued June 8, 1999

In the Matter of Registration No. 2,219,837
For the Trademark EDGE
Issued January 26, 1999

EA DIGITAL ILLUSIONS CE AB, a Swedish)	
Corporation; ELECTRONIC	)	CO-DEFENDANT EDGE
ARTS INC., a	)	GAMES, INC.'S REPLY TO
Delaware corporation,	)	PETITIONERS' AND CO-
Petitioners,	)	DEFENDANT FUTURE'S
	)	OPPOSITION TO EDGE'S
	)	MOTION TO CONFIRM
	)	CONFIRM COURT JUDGMENT
v.	)	AND ORDERS OF 10/8/10 AS
	)	VOID ON THEIR FACE (VOID
EDGE GAMES, INC., a California corporation	)	AB INITIO).
and FUTURE PUBLISHING LTD a UK)	
corporation	)	Cancellation No. 92051465
)	
Co-Registrants/Co-Defendants.)	
)	

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, Virginia 22313-1451

Comes Co-Defendant/Co-Registrant Edge Games, Inc. (“EDGE”) in reply to Petitioners’ and Co-Defendant/Co-Registrant Future Publishing Ltd’s (“Future”) Opposition dated April 8, 2013 to EDGE’s Motion to Confirm the District Court Orders and Final Judgment of 10/8/10 Void on Their Face (Void *Ab Initio*).

October 2010 District Court Orders/Judgment Not Final

1. Contrary to what the Board stated, neither the Final Order made by Judge Alsop on October 8, 2010 nor any other order the court made at that time, nor any judgment the court made at that time, is final. The Board falsely stated that the Court’s Final Order of October 2010 is final since, it argued, the appeal period has passed. However, the Final Order is clearly void on its face (void *ab initio*) since it is clear that a Necessary and Indispensable Party (Future) that is directly impacted by the order to cancel trademark registrations co-owned by Future, was not a party to the law suit and thus all judgments and order arising from the court action are of their nature void *ab initio* – void in their entirety, as if they had never been made. Since the Court’s Final Order is void on its face (void *ab initio*) it is not relevant to speak of a period of appeal having passed which could make a void order final. Quite simply, a void order can be challenged at any time, and thus the court order of October 2010 is clearly not final (and never will be final, since it is void). The Board’s argument is disingenuously supported by the Petitioners’ and Future’s Opposition to the instant Motion of April 8, 2013, and thus EDGE counters Petitioners’ false statements by the same argument above.

2. Indeed, by submitting a known void Court Order to the Board (and through the Board to the Commissioner for Trademarks), and by repeatedly insisting that the Final Court Order is valid and that the Board must act on it when Petitioners and Future both know that the Court Order is void/invalid, the attorneys for Petitioners and Future have committed grievous acts contrary to the California State Bar Rules. So egregious, in fact, is this act by Ms Gajwani and Mr. Phillips that on April 16, 2013 EDGE filed formal complaints against both attorneys with a specific request that they both be disbarred for their actions in knowingly relying on a void court order and knowingly relying on fabricated evidence, fraud by Electronic Arts, Inc. (“EA”), deliberate misleading of the court, and repeated perjury by EA’s witnesses including the witness on behalf of Future (see Exhibit A).

Board and Director (Commissioner for Trademarks) do have the requisite jurisdiction and standing to confirm the 2010 District Court's Final Order as invalid

3. The Board has jurisdiction and standing to confirm the October 8, 2010 District Court Final Order as void/invalid. The Supreme Court and the Court of Appeals have consistently ruled (see citations in prior EDGE submissions) that any court (and thus any venue such as the TTAB Administrative venue) has the power to confirm that an order of either a lower court or a higher court to be void on its face if the court (administrative body/venue) can observe that the ruling court lacked jurisdiction to make the order it made (that is, there was a necessary or indispensable party impacted by the court order that was not a party to the court action). Since the Supreme Court and the Court of Appeals have both ruled that even a lower court (e.g. Superior or County Court) can determine whether a higher court (e.g. District/Federal Court) ruling or order is void on its face, it follows that the TTAB has full power of jurisdiction and standing to also confirm a clearly void court order as invalid, as void *ab initio*. Indeed, the court rulings to-date make clear (see citations in prior submissions) that the Board and the Commissioner for Trademarks are obligated to acknowledge that they have jurisdiction, have standing, and to confirm the 2010 Court Order as void.

Why did Petitioners, a multi-billion dollar company, switch to acting in *Pro Per*, assigning an in-house attorney who was only admitted to the California State Bar days after the instant Petition was filed?

4. The Board should ask itself (as should the Director/Commissioner for Trademarks) why on October 17, 2011 did Petitioners, being a multi billion dollar company, switch from being represented by a reputable firm of attorneys (Cooley) to being represented in *pro per*? This is unprecedented for a publicly trading, multi billion dollar company to suddenly abandon all legal representation and go in *pro per* on such a serious case as this one. Petitioners are always, consistently (other than this one unique exception) represented by counsel in all legal disputes, petitions before the Board, matters before any court, etc.

5. Moreover, it is further suspicious that when Petitioners switched to acting in *Pro Per* they did not assign as the contact person at EA of Senior VP of Legal (Jacob Schatz), but rather a new employee of EA who was only admitted to the California State Bar on October 1, 2009 – just days after the instant Petition was filed by EA on September 11, 2009 (see Exhibit B for the State Bar record for Ms Gajwani). Assigning this case to someone so junior was not because Mr. Schatz was no longer working for EA (see Exhibit B which also contains the State Bar details for Mr Schatz showing he was admitted to the bar in 1994).

6. EDGE submits that the reason Petitioners took the extraordinary, and highly irregular action of switching from having formal legal representation to being represented in-house by an extremely junior attorney, is because Petitioners were well aware (as no doubt were Cooley who came off record) that what Petitioners were about to do was at the very least deeply dishonest, in violation of California State Bar Rules, and perhaps illegal. Namely, Petitioners were knowingly going to insist to the Board that a 2010 Court Order that it knew to be invalid was in fact valid (which we submit no reputable firm of attorneys would put their name to or expose themselves to the consequences of), and Petitioners were about to take the extraordinary move of representing both Petitioners and Co-Defendant Future (again, a course of action EDGE doubts any reputable firm, such as Cooley, would have taken or risked the consequences of).

7. EDGE thus submits that the very act of a multi-billion dollar company taking the unheard of course of action of going in *Pro Per* on such a serious matter shows that Petitioners are well aware that they have been deliberately deceiving the Board (and the Director/Commissioner) by repeatedly presenting the October 8, 2010 District Court Final Order as valid and as one that the Board (Director/Commissioner) should act upon. EDGE also submits that insofar as both Gajwani (and Phillips) knowingly went forward with a Petition before the Board that they both knew was based on misrepresentation to the District Court in 2010, based on fraud by EA in submitting faked evidence to the Court in 2010, based on deliberate deceit and misleading statements by EA before the Court in 2010, and based on perjurious statements by EA's witnesses (including the witness for Future that Mr. Phillips represents), that this too is a reason why Petitioners laid the exposure for this very egregious course of action on the shoulders of a young attorney and why Cooley came off record and why no reputable firm of attorneys would have come on record to replace Cooley for reasonable fear of repercussions to the firm and the individual; attorneys involved in representing Petitioners.

The Board's actions of March 2012 prove the Board is aware the 2010 Court Final Order is invalid.

8. On March 30, 2012 the Board unfairly required Co-Defendant Edge Games, Inc. – **but did not require Co-Defendant Future** – to show proof within 20 days that EDGE had filed a Motion before the District Court to seek reconsideration, review or modification of the October 2010 Final Judgment. In issuing this order on March 30, 2012, the Board was both acting unfairly, and also in real terms confirming that the Board was well aware that the 2010 District Court Action *had to be invalid*. EDGE correctly confirmed in its various responses (and

subsequent filings) to the Board's March 30, 2012 letter that the 2010 District Court Action is void on its face, and showed proof beyond reasonable doubt to the Board that where an order is void on its face then it cannot be challenged (one cannot file a motion for reconsideration), nor can it be amended or reviewed since of its nature it is as if it had never existed.

9. But the very fact that the Board asked EDGE to show proof that it had challenged the Court's Order, but did *not* require Future to show such proof, even though the Board is well aware that Future is a co-defendant in these proceedings precisely because it co-owns a number of the Trademark Registrations in question, *proves* that the Board was well aware that the 2010 Court Order is invalid. If the 2010 Court Order was validly calling for the cancellation of the trademark mark registrations co-owned by EDGE and Future, then the Court Order would have reflected that the order was being made against both EDGE and Future, and the Board would have been in a position of requiring both EDGE and Future to show proof that they had challenged or appealed the 2010 Order. The very fact that the Board only asked this of EDGE proves that the Board must be fully aware that the 2010 Court Order is invalid.

Even Petitioners pointed out that Rule 60(b)(4) relief can be sought at any time, thus proving to the Board that the 2010 Court Order cannot be considered as "final"

10. A Rule 60(b)(4) Application is appropriate where a court order is voidable or only believed to be void in part. But in a situation such as this, where the Court Order is clearly void in its entirety (void on its face, void *ab initio*) due to the absence of a necessary and indispensable party, then the courts have held that a Rule 60 Motion cannot be required in order to 'prove' such an order is void. But most important, the Board erred in stating that the Courts Order is final since a void order is not subject to finality (it is void), and in any event it is well established by the courts that there is no time limit in bringing a Rule 60 (b) (4) application (See *Hacienda Hearing & Cooling Inc, v. United Artist Theatre Co.*, 406 B.R. 643, 648 (Bankr. Del. 2009)). In their Opposition to EDGE's Motion for Reconsideration of May 2, 2012 (see Docket #73), Petitioners and Co-Defendant Future both asserted:

"Indeed, FRCP 60(b)(4) clearly allows a party to seek relief from a void judgment at any time." (Petitioners' Opposition; Docket #73, page 2). (Emphasis added)

Thus even the Petitioners and Co-Defendant Future have confirmed to the Board that the 2010 District Court Final Order is not yet final since as they themselves go to lengths to point out

filing a Rule 60 motion is always open to EDGE, and they point out there is no time limit for EDGE to file a Rule 60 Application. EDGE disagrees with Petitioners that it should be compelled to file such a motion with the District Court since the Final Order is clearly void on its face, as the Board can itself easily determine, but it nonetheless stands as further confirmation to the Board that even Petitioners confirm that the Court's October 2010 Order cannot yet be final since EDGE has no time limit on filing a Rule 60 motion. Again, this is Petitioners' own argument, and proves that the Court Order cannot be said to be final since there is clearly evidence the order is void.

To establish the 2010 Final Order as valid the Board (Director/Commissioner) should have asked/should now ask Petitioners to supply a recently certified copy of the Order along with a Court Opinion confirming that the Court affirms the Order as valid despite the absence of Future as a party to the court action (since the Court will then have to confirm the Order is void and the Board will have gained certainty on the topic).

11. If the Board had any doubt whatsoever that the 2010 District Court Final Order was valid – and, clearly, the Board (and the Director, and the Commissioner) *must* have significant doubts about the Court Order's validity since it has delayed over 2 years acting upon it – then the proper course of action would have been for the Board to require Petitioners to prove the 2010 Court Order is valid. Rather than ask Petitioners for just 'any' certified copy of the Order (as it did), the Board should have asked – indeed should *now* ask – the Petitioners for a recent certified copy of the 2010 Final Order. The Board should further require of Petitioners that this recently certified copy be accompanied by a specific statement by the District Court – in the form of a Memorandum of Opinion or similar – that specifically addresses the fact that Future are a co-owner of the marks sought to be cancelled, and are thus by all reasonable deduction both a necessary and indispensable party, and in which document the Court specifically states that even being aware of the absence of Future as a party to the 2010 law suit, the Court still holds that the October 2010 Final Order is valid. EDGE remains confident that Petitioners could not possibly obtain that confirmation that the Board (Director/Commissioner) should require, since if the court is asked by Petitioners to consider this point the Court will have no option other than to conclude that the Final Order is void, and will thus refuse to do a new certification of it. At least, not a certification accompanied by a court opinion that it is valid despite Future's absence as a party to the action.

12. In summary, there is abundant proof before the Board that the 2010 District Court Final Order is void on its face. There can be no dispute that the Board (and the Director/

Commissioner) have the jurisdiction/standing to confirm the Court Order as void, and indeed have an obligation to confirm the Order as void. Petitioners high suspicious actions also show that they are very aware they have been deceiving the Board by ever suggesting the 2010 Court Order is valid or should be acted on. Were the Board (Director/Commissioner) to ask Petitioners to provide a recent certified copy of the 2010 Order along with the court's confirmation that the absence of Future as a party did not invalidate the Order, then the Board would swiftly gain confirmation that even the Court concurs the 2010 Order is invalid. Last, even Petitioners have confirmed that the Court Order cannot be considered final in any event since at any time where there is a void order EDGE has the right to file a Rule 60 Motion – there is thus no truth to the Board's statement that an appeal period has passed and thus the Order is now final. For all these reasons, and those previously stated, the Board (and the Director/Commissioner) are obligated to confirm the Order as void and must not act on it. If acted upon by the Board/Director/Commissioner, then such action should be immediately reversed and EDGE's marks all reinstated to registration.

Date: April 17, 2013

Respectfully submitted,

By: 

Dr. Tim Langdell, CEO
EDGE Games, Inc.
Co-Registrant in Pro Se
530 South Lake Avenue, 171
Pasadena, CA 91101
Telephone: 626 449 4334
Facsimile: 626 844 4334
Email: ttab@edgegames.com

Certificate of Service

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of Defendant Edge Games Inc's Reply to Petitioners' Opposition to Edge Games Motion to Confirm the Court Final Order As Void was served on the following parties of record, by depositing same in the U.S. Mail, first class postage prepaid, this 17th day of April, 2013:

Robert N. Phillips
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105-3659

Vineeta Gajwani
Electronic Arts, Inc.
209 Redwood Shores Parkway
Redwood City, CA 94065

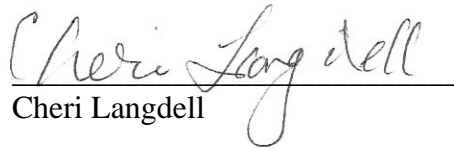

Cheri Langdell

EXHIBIT A

THE STATE BAR OF CALIFORNIA CALIFORNIA ATTORNEY COMPLAINT FORM

Read instructions before filling in this form.

Date:

(1) Your contact information:

Your name: Dr Tim Langdell (CEO, Edge Games, Inc.)

Your address: 530 South Lake Avenue, 171

Your city, state & zip code: Pasadena, CA 91101

Your email address: tim@edgegames.com

Your telephone numbers:

Home _____ Work 626-449-4334 Cell _____

(2) Attorney's contact information: Please provide the name, address and telephone number of the attorney(s) you are complaining about. (NOTE: If you are complaining about more than one attorney, include the information requested in items #2 through #7 for each attorney. Use separate sheets if necessary.)

Attorney's name: Vineeta Gajwani (#2643838)

Attorney's address: Electronic Arts, Inc., 209 Redwood Shores Parkway

Attorney's city, state & zip code: Redwood City, CA 94065

Attorney's telephone number: 650-628-2822

(3) Have you or a member of your family complained about this attorney(s) previously?

Yes ☐ No ☒

If "Yes", please state to whom the previous complaint was made, approximate date of complaint and disposition.

(4) Did you employ the attorney? Yes ☐ No ☒

If "Yes," give the approximate date you employed the attorney(s) and the amount, if any, paid to the attorney(s).

Date employed: _____ Amount paid (if any): \$ _____

If "No," what is your connection with the attorney(s)? Explain briefly.

In-house attorney for opposing party.

(5) Include with this form (on a separate piece of paper) a statement of what the attorney(s) did or did not do which is the basis of your complaint. Please state the facts as you understand them. Do not include opinions or arguments. If you employed the attorney(s), state what you employed the attorney(s) to do. Sign and date each separate piece of paper. Additional information may be requested. (Attach copies of pertinent documents such as a copy of the fee agreement, cancelled checks or receipts and relevant correspondence.)

(6) If your complaint is about a lawsuit, answer the following, if known:

a. Name of court (For example, Superior or Municipal Court, and name of the county)

United States District Court, Northern District of California, San Francisco Division

b. Title of the suit (For example, Smith v. Jones)

Edge Games, Inc. v. Electronic Arts, Inc.

c. Case number of the suit 10-CV-2614-WHA

d. Approximate date the suit was filed June 15, 2010

e. If you are not a party to this suit, what is your connection with it? Explain briefly.

(This complaint is also in reference to the Cancellation Proceeding before the Trademark Trial and Appeal Board (No. 92051465); Electronic Arts Inc & EA Digital Illusions CE AB v. Edge Games, Inc & Future Publishing, Ltd.)

(7) Size of law firm complained about:

- ☐ 1 Attorney
☒ 2 – 10 Attorneys
☐ 11 + Attorneys
☐ Government Attorney
☐ Unknown

Mail to:

Office of the Chief Trial Counsel/Intake
The State Bar of California
1149 South Hill Street
Los Angeles, California 90015-2299

Signature _____

THE STATE BAR OF CALIFORNIA CALIFORNIA ATTORNEY COMPLAINT FORM

Read instructions before filling in this form.

Date:

(1) Your contact information:

Your name: Dr Tim Langdell (CEO, Edge Games, Inc.)

Your address: 530 South Lake Avenue, 171

Your city, state & zip code: Pasadena, CA 91101

Your email address: tim@edgegames.com

Your telephone numbers:

Home _____ Work 626-449-4334 Cell _____

(2) Attorney's contact information: Please provide the name, address and telephone number of the attorney(s) you are complaining about. (NOTE: If you are complaining about more than one attorney, include the information requested in items #2 through #7 for each attorney. Use separate sheets if necessary.)

Attorney's name: Robert N. Phillips (#120970)

Attorney's address: Reed Smith LLP, 101 2nd St, Ste 1800

Attorney's city, state & zip code: San Francisco, CA 94105

Attorney's telephone number: 415-659-5953

(3) Have you or a member of your family complained about this attorney(s) previously?

Yes ☐ No ☒

If "Yes", please state to whom the previous complaint was made, approximate date of complaint and disposition.

(4) Did you employ the attorney? Yes ☐ No ☒

If "Yes," give the approximate date you employed the attorney(s) and the amount, if any, paid to the attorney(s).

Date employed: _____ Amount paid (if any): \$ _____

If "No," what is your connection with the attorney(s)? Explain briefly.

Attorney for opposing party Future Publishing Ltd in the TTAB Cancellation action.

(5) Include with this form (on a separate piece of paper) a statement of what the attorney(s) did or did not do which is the basis of your complaint. Please state the facts as you understand them. Do not include opinions or arguments. If you employed the attorney(s), state what you employed the attorney(s) to do. Sign and date each separate piece of paper. Additional information may be requested. (Attach copies of pertinent documents such as a copy of the fee agreement, cancelled checks or receipts and relevant correspondence.)

(6) If your complaint is about a lawsuit, answer the following, if known:

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United States District Court, Northern District of California, San Francisco Division

b. Title of the suit (For example, Smith v. Jones)

Edge Games, Inc. v. Electronic Arts, Inc.

c. Case number of the suit 10-CV-2614-WHA

d. Approximate date the suit was filed June 15, 2010

e. If you are not a party to this suit, what is your connection with it? Explain briefly.

(This complaint is also in reference to the Cancellation Proceeding before the Trademark Trial and Appeal Board (No. 92051465); Electronic Arts Inc & EA Digital Illusions CE AB v. Edge Games, Inc & Future Publishing, Ltd.)

(7) Size of law firm complained about:

- ☐ 1 Attorney
- ☐ 2 – 10 Attorneys
- ☒ 11 + Attorneys
- ☐ Government Attorney
- ☐ Unknown

Mail to:

Office of the Chief Trial Counsel/Intake
The State Bar of California
1149 South Hill Street
Los Angeles, California 90015-2299

Signature _____

THE STATE BAR OF CALIFORNIA

Wednesday, April 17, 2013

ATTORNEY SEARCH

Jacob Joseph Schatz - #173688

Current Status: Active

This member is active and may practice law in California.

See below for more details.

Profile Information

*The following information is from the official records of The State Bar of California.***Bar** 173688**Number:****Address:** Electronic Arts
209 Redwood Shores
Pkwy
Redwood City, CA
94065-1175
[Map it](#)**Phone Number:** (650) 628-7241**Fax Number:** (650) 628-1422**e-mail:** jschatz@ea.com**County:** San Mateo**Undergraduate
School:** Pomona Coll; Claremont CA**District:** District 1**Sections:** [Litigation](#)**Law School:** Georgetown Univ Law Ctr;

Washington DC

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Status History

Effective Date**Status Change**

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THE STATE BAR OF CALIFORNIA

Wednesday, April 17, 2013

ATTORNEY SEARCH

Vineeta Rajeev Gajwani - #264383

Current Status: Active

This member is active and may practice law in California.

See below for more details.

Profile Information

The following information is from the official records of The State Bar of California.

Bar Number: 264383**Address:**

Electronic Arts Inc
209 Redwood Shores Pkwy
Redwood City, CA 94065

Phone Number: (650) 628-2822**Fax Number:** (650) 628-1422**e-mail:** Not Available**Undergraduate School:**

Duke Univ; Durham NC

Law School:**ATTORNEY PROVIDED INFORMATION**

The information below was provided by the attorney and has not been verified or monitored. The State Bar does not recommend or endorse any attorney.

Practice Area(s):

Intellectual Property

Washington Univ SOL; St Louis MO

County: San Mateo

District: District 1

Sections:

[Intellectual Property Law](#)

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Status History

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10/1/2009

Admitted to The State Bar of California

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This member has no public record of discipline.

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